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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/716,794

11/19/2003

John James Daniels

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04/24/2006

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EXAMINER

CLEVELAND, MICHAEL B

ART UNIT

PAPER NUMBER

1762

DATE MAILED: 04/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/716,794	DANIELS, JOHN JAMES	
	Examiner	Art Unit	
	Michael Cleveland	1762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-24 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of A-C) Figs. 22-27, D) Fig. 2, and E) Figs. 1 and 66A-C with traverse in the reply filed 2/13/2006 is acknowledged. The election is not responsive because 1) Applicant's elections are not mutually consistent because the simple particle of Fig. 2 is not disclosed or suggested as capable of the alignment method of Figs. 22-27, and 2) Applicant has not elected a single final use because Fig. 1 is a flexible form, and Figs. 66A-C represent 3 different uses of the wall of a house (which is not disclosed or suggested as flexible). On further consideration, the three uses of Fig. 66 (as transparent glass, as a video/information display, and as a mirror) have been separately listed below. It is further noted that Applicant states that claims 1-24 read on the elected species. The statement is incorrect because claims 4-7 are not consonant with the election of the organic light emitter of Fig. 2 and because the material of claims 10-17, 19, and 21-24 are not consonant with the election of Figs. 22-27.

Applicant argues that there would be no serious burden on the Examiner to examiner "dozens" of independent inventions. The argument is unconvincing because the examination of even two independent inventions places an extreme burden on the examiner in cases, such as this one, where the differing issues are likely to arise during prosecution of the different species. In fact, Applicant's claims embrace many more than dozens of independent inventions. Each species election below is made between mutually exclusive species. Therefore, the species are independent, and therefore the elections of species are appropriate in the absence of an admission by Applicant or evidence that shows the species to be obvious variants.

Applicant argues that the examiner has not established a serious burden. The argument is unconvincing because the species are mutually exclusive. Therefore, a search for any of the elected species would have different search queries and strategies (i.e., a different field of search) than the searches for any of the other species. Particularly aggravated instances of burdensome relationships are 1) the different methods across at least three classes (class 427 (coating methods), class 445 (filling methods), and class 264 (molding methods)), and 2) the different operation of electroluminescent devices and photovoltaic (radiation-to energy) devices.

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Applicant's assertion that identification of class and subclass is a minimum requirement for restriction is not germane to election of species. Applicant's notation that the article and final use of the article are not limitative to the search and examination of method claims. The statement is incorrect because the method limitations imply some structure of the article that may influence the final use of the articles. Accordingly, the claims that would necessarily lead to a non-elected final product would themselves be non-elected.

2. The (modified) requirement for election of species follows:

This application contains claims directed to the following patentably distinct species of the claimed invention:

A) Different methods of making light active devices, such as A1) ink-jet printing (Fig. 10), A2) printing according to the method of Fig. 12, A3) printing according to the method of Fig. 13, A4) filling between two substrates (Figs. 22-27), A5) extrusion molding a fiber (Figs. 114-117), A6) extrusion coating (Figs. 118-120), A7) extrusion molding a ribbon (Figs. 121-124), A8) drawing and thinning (Figs. 133-134), A9) injection molding (Fig. 138), or A10) spraying (Figs. 140-142).

B) If Applicant selects any of the methods above which does not form a free-standing film (i.e., any of A1-4, 6, or 10), Applicant must further select a method of polymerizing and (possibly) aligning, such as that of Fig. 11, Fig. 18, Fig. 19, Fig. 20, (Figs. 25-27), (Figs. 28-32), (Figs. 33-36), (Figs. 45-48), (Figs. 143-146), (Figs. 147-150), (Figs. 151-155), (Figs. 156-158), (Figs. 160-162), (Figs. 163-165), or (Figs. 166-167).

C) Applicant must also select a device configurations of Fig. 11, Fig. 14, Fig. 15, Fig. 16, Fig. 17, Fig. 18, Fig. 19, Fig. 20, Fig. 21, Fig. 27, Fig. 32, Fig. 36, Fig. 42, Fig. 48, Fig. 49, Fig. 50, Fig. 51, Fig. 56, Fig. 61, Fig. 69, Fig. 71, Fig. 72, Fig. 74, Fig. 79, Fig. 81, Fig. 105, Fig. 117, Fig. 120, Fig. 124, Fig. 127, Fig. 129, Fig. 130, Fig. 131, Fig. 132, Fig. 133, Fig. 134, Fig. 137, Fig. 138 (an injection molded article), Fig. 139, Fig. 146, Fig. 150, Fig. 155, Fig. 158, Fig. 162, or Fig. 165.

D) Particles of Fig. 2, Fig. 3, Fig. 4, Fig. 5, Fig. 6, Fig. 7, Fig. 8, Fig. 9, Fig. 37, Fig. 38, Fig. 41, item 40 of Fig. 42, item 10 of Fig. 48, Fig. 53, Fig. 54, Fig. 55, Fig. 69, Fig. 73, Fig. 76,

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Fig. 80, inorganic light emitting materials, visible-radiation-to-energy materials, or non-visible-radiation-to-energy materials.

E) Final use of Fig. 1, 59 (misabeled as 60), 60, 62, 63, 64, 65, 66(a), 66(b), 66(c), 67(b), 67(d), 68, 117, 120, 124, 130, 131, 132, 137, 138, or 139.

Applicant's selections of elements A-E must be mutually consistent. For example, if Applicant chooses the method and configuration of Fig. 27 (which forms a panel), Applicant may not also select the device configuration of Fig. 137 (which relies on the intersection of a coated anode wire and a coated cathode wire, and is therefore not a panel).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.


3. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Cleveland whose telephone number is (571) 272-1418. The examiner can normally be reached on Monday-Thursday, 7-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michael Cleveland
Primary Examiner
Art Unit 1762

4/20/2006